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FILED
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RICHARD W. WILKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PADAM KUMAR KHANNA,

Plaintiff,

vs.

BALJIT RANDHAWA,

Defendant.

Case No: C07-⁵¹³⁶~~0584~~-EMC

MOTION FOR FINAL DEFAULT
JUDGMENT AGAINST DEFENDANT,
BALJIT RANDHAWA

Plaintiff hereby submits this Memorandum of Law in support of his Motion for Final
Judgment against defendant BALJIT Randhawa.

I

Factual Background

Plaintiff filed a complaint against defendant BALJIT Randhawa (Baljit) on May 16, 2007 in the United States District Court for the Northern District of California, San Francisco Division along with five other defendants, State Bar of California, Pat McElroy, State Bar Court judge in her official as well as personal capacity, Tammy Albertsen-Murray, Deputy Trial Counsel in her official as well as personal capacity, Alice Verstegen, Investigator for the State Bar in her official as well as personal capacity and Baljit Randhawa. The Complaint raises Federal Questions and alleges violation of his civil rights in six counts, most particularly alleging that defendant BALJIT Randhawa (Baljit) conspired with Deputy Trial Counsel, Tammy Albertsen-Murray (Murray) to fabricate, destroy evidence and submitted to subornation by Murray to commit blatant perjury and cause irreparable harm and injury to plaintiff.

On the same day Plaintiff filed his Complaint, the Court issued a Summons in a Civil Action, which, in part, notified defendant that she must, within twenty days after service of the Summons, file with the Clerk of Court, and serve upon plaintiff an Answer to the Complaint. Defendant, through a recognized process server, Pro Serve of Alameda County, received service of the Complaint and Summons on June 6, 2007. Defendant duly received the Complaint and Summons at her place of residence in Hercules, California. By the expiration of the twenty-day period specified on the Summons, the defendant had not filed an Answer to the Complaint with the Clerk of this Court, nor had she served a copy of the Answer upon plaintiff. To date, the defendant has not responded to the Complaint, nor otherwise appeared in this action.

On July 3, 2007, plaintiff filed with this Court a Request for Entry of Default against defendant, which was entered on July 24, 2007 by the clerk of the Court.

On August 7, 2007, United State Magistrate Judge, Hon. Edward M. Chen, issued an Order severing plaintiff's claim against defendants Jagjit Randhawa and Baljit Randhawa after conferring with State Bar Defendants' (Pat McElroy, Tammy Albertsen Murray and Alice

1 Verstegen) attorney, Mr. Mark Torres-Gil, and plaintiff. Both plaintiff and Mr. Torres-Gil
2 agreed that for the case to proceed smoothly against the State Bar Defendants who have all
3 promptly made appearances before the Court, it was proper and necessary to sever plaintiff's
4 claim against Randhawas in the interest of a prompt, orderly, economical and efficient disposal
5 of this litigation. A copy of the Order severing plaintiff's claims against defendants Jagjit and
6 Baljit Randhawa has been duly served upon both Jagjit and Baljit Randhawa at their residence
7 address by certified mail as per the instructions of Hon. United States Magistrate Judge,
8 Edward M. Chen. A Certificate of Service is attached herewith.

9 In his Order severing plaintiff's claims against defendant Jagjit Singh Randhawa, issued
10 on August 7, 2007, Judge Chen indicated that he would assign the Randhawas case to a District
11 Judge and would notify plaintiff about the new case number. As of October 10, 2007, plaintiff
12 had not received any communication from Judge Chen. On October 11, 2007, plaintiff
13 received an Order Setting Briefing Scheduled for Plaintiff's Motion for Default Judgment or,
14 Alternatively, Requiring Plaintiff to Show Cause. In this Order a new case number was
15 assigned but no District Judge was mentioned who is supposed to hear the Motion for Final
16 Default Judgment. Docket Entry 3. Plaintiff, as per the instruction, has duly served a copy of
17 this order on Baljit Randhawa on October 19, 2007 by certified mail. A Certificate of Service is
18 attached herewith for filing with the Court.

20 II

21 Defendant Has Failed to Answer the Complaint or Otherwise

22 Defend This Action and Plaintiff is Entitled to a

23 Judgment By Default

24 Rule 12(a)(1)(A) of the Federal Rules of Civil Procedure provides that a defendant shall
25 serve its answer to a complaint within twenty days of service of the latter. As noted above, the
26 Complaint in this case was filed on May 16, 2007, and personally served upon the defendant.
27 The Summons, issued by the Court on May 16, 2007 and served upon the defendant on June 6,
28 2007, together with the Complaint, notified the defendant of her obligation to file an answer

1 with the Clerk of Court, and to serve a copy of the Answer upon plaintiff, within twenty days
2 from the date of service. Twenty days, from the June 6, 2007 service date was June 26, 2007.
3 Plaintiff gave an extra seven days for defendant to file her answer. As of July 3, 2007,
4 defendant had not filed an answer with the Clerk, had not served an answer upon plaintiff, had
5 made no entry of appearance in this matter, and had not otherwise responded to the civil action
6 instituted. To this date, defendant has undertaken no defense in this matter.

7 Plaintiff recognizes that entry of a default judgment against a defendant is a severe
8 remedy. See, e.g., E.F. Hutton & Co., Inc. v. Moffatt, 460 F.2d 284, 285 (5th Cir. 1972).
9 Where, as here, however, a party does not respond to a properly served Complaint and ignores
10 a duly issued and properly served Summons of a Court, a default judgment is the appropriate
11 and, indeed, only recourse. See In re Knight, 833 F.2d 1515, 1516 (11th Cir. 1987) (where
12 party offers no good reason for late filing of answer, entry of default judgment appropriate);
13 First City Nat'l Bank of Fort Worth v. Cook, 117 F.R.D. 390 (N.D. Tex. 1987)(default
14 judgment appropriate where party served has failed to answer). Plaintiff would prefer that this
15 case be decided upon its merits and has every confidence he would prevail at a trial. Since the
16 defendant does not appear disposed to defend this action, however, this Court has as the only
17 avenue available to conclude this matter, the entry of a default judgment against defendant.

18 III

19 The Default Judgment Sought by Plaintiff Should Be

20 Awarded by this Court

21 When the Court determines that a defendant is in default, the factual allegations of the
22 complaint are taken as true, and this rule applies whether the complaint seeks legal or equitable
23 relief. Fed. Trade Comm'n v. Kitco of Nevada, Inc. 612 F. Supp. 1282 (D.C. Minn. 1985). For
24 the benefit of this Court in determining the remedy to apply in this case, should the Court agree
25 to enter a judgment by default against defendant, plaintiff offers the following summary of
26 what he expects his evidence would have shown at a trial of this matter.

27 New evidence recently discovered in the form of a criminal complaint filed by
28 Amerindia Foods Limited (AFL) in India proves beyond any reasonable doubt that Baljit

1 conspired with the Deputy Trial Counsel, Tammy Albertsen-Murray (Murray) of the State Bar
2 Office of the Chief Trial Counsel, during the investigative stages of her complaint, to harm and
3 injure plaintiff by fabricating, destroying and spoliating material evidence and agreeing with
4 Murray to commit perjury during the depositions and trial and thus violated plaintiff's civil
5 rights deliberately and intentionally. The complaint filed with this Court fully outlines most of
6 the salient violations committed by Baljit. However, one glaring example of deliberate
7 commission of perjury under oath is Baljit's testimony during trial. Under questioning, she
8 testified as follows:

9 Q. Did you get a citation on February 22nd, 1996 from a police officer?

10 A. Yes.

11 Q. Do you remember what was that case about?

12 A. *I was driving the car* (Emphasis added). I had no license, but I had a license
13 from India, so I don't speak much English on that time, so I couldn't explain
14 to the officer that I had a license from India. I don't have a license from here.

15 Q. So this is your testimony that you were driving the car at that time this
16 accident happened.

17 A. Yes.

18 (Trial .Trans. III-60:24-25, 61:1-9)

19 However, in her affidavit submitted under oath and under the penalty of perjury
20 for the Temporary Restraining Order (TRO) in her Order to Show Cause in the Contra
21 Costa Court, Case Number FL019677 dated April 10, 1996, (Emphasis added) she
22 stated that at that point in time, February 22, 1996, she was NOT driving the
23 Car as she did not know how to drive the car. (Trial.Trans. II-73:8-25, 9:1-2)

24 Petitioner introduced his Exhibit OO, an Order to Show Cause filed by Baljit
25 under the penalty of perjury under the laws of the State of California in the City and
26 County of San Francisco, Superior Court, Case Number FL019677, filed April 10, 1996
27 showing that Baljit was represented by another attorney, Ms. Judy B. Louie, Esq.
28

1 Petitioner also drew the Court's attention to the statement made by Baljit about the
2 Vehicle Code violation of February 1996 in her affidavit in the Order to Show cause.
3

4 She stated:

5 " 8. On February 22, 1996, Respondent drove me to his
6 brother's home to pick-up my social security card. When I
7 got into the car, I noticed that Respondent was drunk.
8 Respondent was driving very fast and was weaving between
9 cars on the freeway. I was very afraid and told Respondent
10 to slow down and drive carefully. Respondent then said, "I
11 am going to kill you." Respondent hit 2-3 cars and
12 accelerated toward a commercial truck. Respondent
13 rammed my side of the car into the commercial truck.
14 Respondent then pulled the car to the side of the freeway
15 and got out of the car to talk to the truck driver. Respondent
16 then drove away and let me on the side of the road.
17

18 9. A passerby let me use his cellular phone and I called
19 my brother-in-law and told him what happened. The police
20 arrived and questioned me and issued a citation. I do not
21 know how to drive a car and have never driven a car. (See
22 Exhibit A)"
23

24 Exhibit OO, Marriage of Randhawa

25 Attachment to Application and

26 Declaration for Order

27 Page 3:1-17 Case No. FL019677, Filed

28 April 10, 1996 in the San Francisco

City and County and represented by an

Attorney by the name of Judy B. Louie
of the Nihonmachi Legal Outreach.

Exhibit OO is attached herewith.

IV

Plaintiff Should Be Awarded Just And Reasonable

Compensatory Damages

Even though plaintiff deserves compensatory and punitive damages for the calculated harm and injury meted out to him by Baljit by fraudulent and deliberate deception, plaintiff is foregoing his request for punitive damages.

Plaintiff respectfully requests this Court to please grant a just and reasonable compensatory damage award to plaintiff in the sum of Three Hundred seventy Thousand U.S. Dollars.

Loss of income for the following periods:

1. November 2001 through October 2004: \$120,000 per year for three years for defending wrongful conviction suit in the State Bar Court: $\$120,000 \times 3 = \$360,000$

2. November 2004 through June 2006: \$15,000 per month for Nineteen Months for being on the inactive list by the order of the Hearing Judge. $\$15,000 \times 19 = \$285,000$. July 2006 through August 2007 for being unable to make a living by the order of the Supreme Court: $\$15,000 \times 13 = \$195,000$

Total for ACTUAL loss of income to-date (August 2007) = \$740,000*

Total judgment amount against Baljit= \$370,000

* This is an estimated sum based on the current available average income of attorneys who have had over 25 years of practice.

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

) ss

CASE NO: 5136
C-07-~~2587~~ EMC

I, Arthur Arenas, declare under penalty of perjury that the foregoing is true and correct. That I am over the age of 18 and not a party to the within action. I am a process server and my business address is: 414 Pendleton Way, Suite #2, Oakland, CA 94621.

On 08/14/2007, I served the foregoing document described as the following on the parties:

ORDER SEVERING PLAINTIFF'S CLAIMS AGAINST DEFENDANTS
JAGJIT SINGH RANDHAWA AND BALJIT RANDHAWA

in this action by placing a copy thereof enclosed in the sealed envelope addressed as follows:

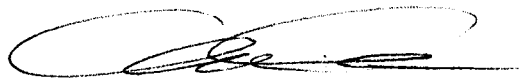
JAGJIT SINGH RANDHAWA
280 Sparrow Drive
Hercules, CA 94547

BALJIT RANDHAWA
280 Sparrow Drive
Hercules, CA 94547

[X] (BY CERTIFIED MAILING) On 08/14/2007 from Oakland, CA, I enclosed a copy in an envelope and deposited the sealed envelope with the United States Postal Service Office by certified mailing, with postage fully pre-paid addressed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on 08/14/2007.



Arthur Arenas (#633 San Francisco County)

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| Total Postage & Fees | \$ | \$5.38 | |

Sent To
BALJIT RANDHAWA
 Street, Apt. No.,
 or PO Box No. **280 Sparrow Drive**
 City, State, ZIP+4 **Hercules, CA 94547**

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)

COUNTY OF ALAMEDA)

) ss

CASE NO: ⁵¹³⁶~~C-07-2327~~ EMC

I, Arthur Arenas, declare under penalty of perjury that the foregoing is true and correct. That I am over the age of 18 and not a party to the within action. I am a process server and my business address is: 414 Pendleton Way, Suite #2, Oakland, CA 94621.

On 10/19/2007, I served the foregoing document described as the following on the parties:

ORDER SETTING BRIEFING SCHEDULE FOR PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT OR, ALTERNATIVELY, REQUIRING PLAINTIFF TO SHOW CAUSE;

in this action by placing a copy thereof enclosed in the sealed envelope addressed as follows:

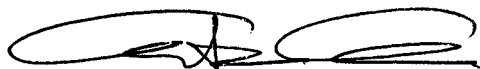
JAGJIT SINGH RANDHAWA
280 Sparrow Drive
Hercules, CA 94547

BALJIT RANDHAWA
280 Sparrow Drive
Hercules, CA 94547

[X] (BY CERTIFIED MAILING) On 10/19/2007 from Oakland, CA, I enclosed a copy in an envelope and deposited the sealed envelope with the United States Postal Service Office by certified mailing, with postage fully pre-paid addressed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on 10/19/2007.



Arthur Arenas (#633 San Francisco County)

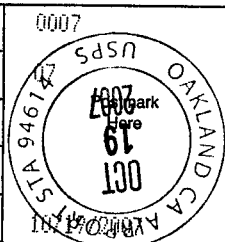
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City, State, ZIP+4 HERCULES, CA 94547